A. RAHIM SIAN

v.

MESDI WARIAN

HIGH COURT MALAYA, MUAR
MAHADEV SHANKAR J
[CIVIL SUIT NO. 44 OF 1977]
18 SEPTEMBER 1984

DAMAGES: *Quantum - Whether exemplary damages could be awarded.*

The plaintiff was slashed by the defendant with a parang and sustained serious injuries, including the loss of his left eye. The issue of liability was conceded by the defendant's counsel at the hearing. At the time of the attack the plaintiff was an odd-job labourer on pineapple plantations. He claimed that he earned an average of RM300 per month. Since his employment was of a casual nature, it was agreed between the parties that RM150 per month would be a fair figure for the purpose of computing the sum to be awarded by way of loss of earnings and loss of earning capacity.

Held:

[1] The plaintiff was awarded RM25,000 by way of general damages and RM10,000 by way of special damages for actual loss of earnings and also for loss of earning capacity and loss of future earnings.

[2] The categories in which exemplary damages may be awarded are very narrow and the instant case was not within the permitted categories. Hence no exemplary damages were awarded.

[Judgment for plaintiff.]

Cases referred to:
Loudon v. Ryder [1953] 2 QB 202; [1953] 1 All ER 741
Rookes v. Barnard [1964] AC 1129

Other source referred to:
Halsburys Law of England, 4th Edn., Vol. 12, p. 474

For the plaintiff - C.K.G. Pillay; M/s. Hassan Yunos & Co.
For the defendant - Pritam Singh Brrard; M/s. Pritam Singh

JUDGMENT

Mahadev Shankar J:

Abdul Rahim bin Sian, the plaintiff in this case, was slashed by the defendant, Mesdi bin Warian on 4 April 1973 at about 8.00 a.m. with a parang. He sustained serious injuries and lost the sight of his left eye.

When the case came on for hearing, the defendant was absent.

The plaintiff's evidence as to what happened was unchallenged. It was to the following effect.

On the day in question, the plaintiff had gone to visit his friend Mastor bin Mesdi at his house. This Mastor was the son of the defendant and a good friend of the plaintiff.

After the visit and when the plaintiff was on his way out, the defendant attacked him without any warning with a parang. He was slashed on the head. The scar was still visible and extended from just above the left temple and came diagonally across the left eye. The plaintiff put up his right hand to ward off the blow and sustained injuries on his hand also. According to the plaintiff there was no previous quarrel or misunderstanding between the parties and the assault was completely unprovoked.

In his evidence-in-chief the plaintiff confirmed that all injuries and disabilities recited in the statement of claim were true. Without going into great detail, suffice it to say that the injury to the head cut through the skull into the brain. The left eye ball was split into 2 unequal portions. The severity of the attack was such that it is a credit to the doctors who attended to the plaintiff that he is still alive.

The defendant was charged with a criminal offence arising out of this assault. We are told that he pleaded guilty and was imprisoned for 3½ years.

At the time of this attack the plaintiff was an odd-job labourer on pineapple plantations. He claims that he earned an average of RM300 per month. Since his employment was of a casual nature, it was agreed between the parties during cross-examination that RM150 per month would be a fair figure for the purpose of computing the sum to be awarded by way of loss of earnings and loss of earning capacity.

There were some small items of special damage for actual expenditure incurred in travelling expenses to the hospital which were not proved.

In the course of their submissions, Mr. Pritam Singh, Counsel for the defendant, conceded the issue of liability and suggested that for general damages the plaintiff should be awarded RM25,000 and for special damages by way of loss of actual earnings, loss of future earnings, and for loss of earning capacity a sum of RM10,000 would be fair. Mr. C.K.G. Pillay was in agreement with these figures.

I therefore awarded the plaintiff RM25,000 by way of general damages and RM10,000 by way of special damages for actual loss of earnings and also for damages for loss of earning capacity and loss of future earnings.

The severity of this unprovoked attack on the plaintiff led me to the view that this was an appropriate case for exemplary damages. I referred Counsel to the case of *Loudon v. Ryder* [1953] 2 QB 202 and also [1953] 1 All ER 741 as authority for the proposition that this was a proper case in which exemplary damages should be awarded.

Both Counsel, out of deference to me, left the issue of exemplary damages to the Court.

I then proceeded to award RM15,000 as exemplary damages. I did so because I felt that this was a clear case where the defendant should be punished for his conduct, and others who are minded to take the law into their hands should be deterred from inflicting this kind of violence. I also felt obliged to vindicate the strength of the law.

At the time this judgment was dictated the order of the Court had not yet been extracted and I had an opportunity of re-considering the matter. It came to my notice that the case of *Loudon v. Ryder* was over-ruled by *Rookes v. Barnard* [1964] AC 1129 at page 1229.

It would appear that the categories in which exemplary damages may be awarded is very narrow. Reference may be made to paragraph 1190 of the *Halsbury's Laws of England* Vol. 12 at p. 474 (4th Edn).

The present case is not within the permitted categories and the award of RM15,000 for exemplary damages was clearly *per incuriam.*

Accordingly I revise my order and hereby adjudge and order that the defendant in this case do only pay the plaintiff the sum of RM25,000 for general damages and RM10,000 for special damages and for loss of future earnings and earning capacity. As for interest, I order that the same should run at 6% per annum from 8 June 1982 up to realisation.

The plaintiff will also have the sum of RM2,000 in costs inclusive of disbursements.

Also found at [1985] 2 CLJ 34